



RECEIVED

AUG 4 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Law Department

August 4, 2000

Magalie Roman Salas
Secretary
445 Twelfth Street, SW
TW-A325
Washington, DC 20554

Re: **CC Docket Nos. 96-98 and 99-68**


Dear Ms. Salas:

Prism Communication Services, Inc. hereby submits an original and four (4) copies of its Reply Comments in the above-referenced dockets.

Also enclosed is a Return Copy of this filing. Please date-stamp this copy and return it in the envelope included for that purpose.

Any questions regarding this filing should be directed to the undersigned counsel.

Very truly yours,


Renée R. Crittendon
Deputy Chief Counsel-Telecommunications

cc: Service List

RECEIVED

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

AUG 4 2000

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of)	
)	
Implementation of the Local Competition)	CC Docket No. 96-98
Provisions of the Telecommunications)	
Act of 1996)	
)	
Intercarrier Compensation for)	CC Docket No. 99-68
ISP-Bound Traffic)	
)	

REPLY COMMENTS OF

PRISM COMMUNICATION SERVICES, INC.

Prism Communication Services, Inc. ("Prism"), hereby submits its Reply Comments in response to the Federal Communications Commission's ("FCC" or "Commission") June 23, 2000 Public Notice in the above-referenced proceeding concerning inter-carrier compensation for Internet Service Provider ("ISP") bound traffic.

I. DISCUSSION

As Prism and others noted in their comments, the Commission's finding that ISP-bound traffic is jurisdictionally interstate was not an issue identified by the Court of Appeals on review. Rather, the Court remanded the Commission's *Reciprocal Compensation Ruling*¹ because the FCC did not adequately justify applying its end-to-end jurisdictional analysis to its determination of whether ISP-bound calls are subject to the reciprocal compensation requirements of Section 251(b)(5) of the

¹ See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Inter-Carrier Compensation for ISP-Bound Traffic, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68, FCC 99-38, 14 FCC Rcd 3689 (1999) ("*Reciprocal Compensation Ruling*").

Telecommunications Act of 1996.² As the bulk of commenters noted, the sole basis for the Court's remand was its determination that a gap existed in the FCC's extension of the end-to-end analysis to determine whether particular traffic fits the local call model or the long-distance call model.³ As the Court stated, the FCC did not explain "why such an extension made sense in terms of the statute or the Commission's own regulations" and the "arguments supporting use of the end-to-end analysis in the jurisdictional analysis are not obviously transferable to th[e reciprocal compensation] context."⁴ The Court's concerns are wholly justified.

For their part, many commenters have demonstrated to the Commission that the jurisdictional nature of an ISP-bound call is not determinative of whether that call is local or long distance.⁵ As ALTS noted, for example, the Commission has previously recognized local service as jurisdictionally interstate.⁶ Simply because ISP-bound traffic is determined to be jurisdictionally interstate, does not mean such traffic is not "local" as a service category.⁷

Nevertheless, and in spite of the Court's clear directives, incumbents ask the Commission to continue to utilize the end-to-end analysis to determine whether reciprocal compensation applies to ISP-bound traffic, without addressing why such an extension makes sense in the context of the statute and FCC rules.⁸ Remarkably,

² See *Bell Atl. Tel. Cos. v. FCC*, 206 F.3d 1, 3-6 (D.C.Cir. 2000).

³ See e.g., AT&T Comments 5-6, Focal et al., Comments at 3-6, ALTS Comments t 4-6; see also, 206 F.3d at 3, 5-6.

⁴ 206 F.3d. at 3, 6.

⁵ See e.g., AT&T Comments at 11 ("[a] finding of federal jurisdiction in no way establishes that this traffic can rationally be excluded from the *federal* reciprocal compensation requirements").

⁶ See ALTS Comments at 6 & n.17.

⁷ *Id.*

⁸ See e.g., Bellsouth Comments at 6 ("[t]he end-to-end jurisdictional analysis and the question of where a call terminates are essentially two sides of the same coin"); Verizon Comments at 5 ("the Court questioned whether the end-to-end analysis . . . used for jurisdictional purposes is applicable here. . . . it is"); Comments of USTA at 5 ("[t]he Commission correctly applied its end-to-end analysis[footnote omitted] in

incumbents assert that “[t]he Court’s concern that an end-to-end jurisdictional analysis does not bear on whether the call is a local call reflects a misunderstanding” the Commission should clarify.⁹ They continue to advance arguments based on a line of cases and a rationale already rejected by the Court.¹⁰ In doing so, incumbents make the same fatal mistake made by the Commission in its *Reciprocal Compensation Ruling* that resulted in the instant remand.

In contrast, Prism and other carriers have looked to the statute and the Commission’s own regulations to fill the “gap” in the Commission’s analysis on whether ISP-bound traffic is local for purposes of Section 251(b)(5).¹¹ As the Circuit Court pointed out, Section 251(b)(5) of the Act and Section 51.701(b)(1) of the Commission’s rules, by their very terms, require reciprocal compensation for the transport and termination of ‘telecommunications’ traffic that ‘originates and terminates within a local service area.’¹² Pursuant to the Commission’s rules, ‘termination’ is “the switching of local telecommunications traffic at the terminating carrier’s end office switch, or equivalent facility, and delivery of that traffic to the called party’s premises.” 47 C.F.R. § 51.701(d). As further demonstrated by commenters, the application of reciprocal

concluding that ISP-bound calls are jurisdictionally interstate [footnote omitted]. As such . . . reciprocal compensation does not apply to ISP-bound traffic.”).

⁹ Bellsouth Comments at 6.

¹⁰ See e.g., Bellsouth Comments at 6 (citing; *Teleconnect Co. v. Bell Telephone Co.*, 10 FCC Rcd 1626 (1995) (“Teleconnect”); see also, 206 F.3d at 6 (finding that “the cases relied on for using this analysis are not on point” and citing *Teleconnect*).

¹¹ See e.g., Focal Comments at 7-9 (“traffic ‘terminates’ at ISPs because they are end users of telecommunications services”); New York Public Service Commission Comments at 2 (“a call to an ISP is no different than a local call to any other larger volume customer, such as a bank or a radio call-in program; many intrastate communications ultimately connect to other networks”); WorldCom Comments at 16-21 (“the D.C. Circuit’s decision and those of other federal courts further indicate that ISP-bound traffic must terminate at the ISP due to the statutory and regulatory distinction between telecommunications and information services. ISPs provide information services.”); ALTS Comments at 7-9 (“[a] dial-up call to an ISP is the same as any other dial-up call, and the determination of whether the call is exchange access or local service should hinge on whether the call ‘terminates’ at a number inside or outside the local calling area”).

compensation is determined by whether the originating carrier hands off the call to a terminating carrier, which then terminates the call at a number within the local calling area.¹³ Significantly, as WorldCom points out, there is solid support for the conclusion that calls to ISPs terminate at the ISP, given that 32 state commissions have determined that such calls are subject to reciprocal compensation.¹⁴

Not surprisingly, the incumbents have not provided any new or compelling arguments to counter the statutory and regulatory analyses offered by the majority of commenters and by the Court. Instead, incumbents continue to argue that calls to the Internet do not “terminate” within a local calling area but rather “transit the ISP location on their way to their ultimate destination.”¹⁵ USTA claims, for example, that “[t]he jurisdictional determination that the communication is interstate is tantamount to a finding that there was not a local ‘called party’ and that the communication was intended for and continued to an out-of-state terminating location.”¹⁶ Similarly, Verizon argues that “[t]he fact that the calls are delivered to ISPs rather than to carriers is not legally significant.”¹⁷

The incumbents’ claims blatantly ignore the relevant statutory definitions and disregard the clear distinction the Court made between the “end-to-end” jurisdictional analysis and the regulatory analysis that was lacking from the Commission’s ruling. Moreover, the incumbents statements overlook the Court’s specific and clear conclusion that the ISP “is clearly the ‘called party’” and that as such, ISP-bound calls -- traffic that is switched by the ISP’s local exchange carrier and then delivered to the ISP-- would

¹² See 206 F.3d at 6; see also 47 CFR §51.701(b)(1), Section 251(b)(5).

¹³ See e.g., ALTS Comments at 9-10.

¹⁴ See WorldCom Comments at 20-21 & n.79.

¹⁵ Verizon Comments at 6.

appear to meet the definition of local traffic.¹⁸ As WorldCom points out in its comments, in addition to the D.C. Circuit, the Fifth Circuit and two federal district courts have all concluded that ISP-bound traffic terminates within a local service area.¹⁹ The D.C. Circuit itself went on to say that the FCC avoided reaching this conclusion by using the end-to-end analysis to determine where the traffic “terminates.”²⁰ Incumbents’ arguments are similarly flawed. In fact, no incumbent has provided a rational analysis to address why ISP-bound traffic does not “terminate” at the ISP’s local server. Instead, the incumbents have concluded that the Court was simply wrong and have chosen to ignore the legal significance of the Commission’s rules and the statute.

Accordingly, Prism urges the Commission to discount the comments of the incumbents who have clearly not provided any new arguments as to how the Commission might address the Court’s concerns. Instead, the incumbents proffer the same baseless arguments they made on appeal. In contrast, Prism and others have demonstrated that, consistent with the Court’s opinion and the relevant statutory and regulatory terms, ISP-bound traffic terminates at the telephone number of the called party designated by the terminating carrier’s switch. Quite simply, if the called number is within the local calling area of the originating end-user, then reciprocal compensation applies. Further, as AT&T and others point out, ISP-bound calls have “always been treated as ‘local’ . . . under the Commission’s prior decisions and the terms of the *Local Competition Order*.”²¹ Indeed, incumbents offer no rational basis for denying carriers compensation for the costs

¹⁶ USTA Comments at 7.

¹⁷ Verizon Comments at 7.

¹⁸ 206 F.3d at 6.

¹⁹ WorldCom Comments at 17 (citing *Southwestern Bell Tel. Co. v. Pub. Utils. Comm’n*, 208 F.3d 475, 483 (5th Cir. 2000) and *BellSouth Telecommunications v. MCI Metro Access Transmission Servs.*, 97 F.Supp. 2d 1363, 2000 WL 656527, at *14 (N.D.Ga. May 4, 2000)).

²⁰ 206 F.3d at 6.

attributed to terminating ISP-bound traffic. As such, the Commission should conclude that ISP-bound calls are local for the purposes of Section 251(b)(5)'s cost-based reciprocal compensation obligations.

Finally, Prism urges the Commission not to leave the door open to any uncertainties or issues for potential dispute in its ruling on these issues. As Prism noted in its comments, it is critically important that the Commission heed the Court's guidelines and act quickly to fill the existing federal standards vacuum in a manner that avoids further appeals. This is especially necessary in light of the fact that reliance on incumbents' foregoing arguments will likely return this proceeding to the Court for further review. It is also clear from four years of experience that incumbents can and will exploit regulatory ambiguities to protect their local monopolies and to impede the development of local competition. Though the Commission loftily believed in its *Reciprocal Compensation Ruling* that "a negotiation process, driven by market forces, is more likely to lead to efficient outcomes than are rates set by regulation,"²² the very notion of voluntary negotiations for reciprocal compensation was beyond illusion. In Prism's own experience, incumbents utilized the FCC's *Reciprocal Compensation Ruling* to their own benefit, taking advantage of their superior bargaining position and a new carrier's efforts to enter the market quickly. The result was not a voluntary "negotiation process, driven by market forces," but rather the imposition of the incumbents position -- its refusal to negotiate reasonable compensation provisions for ISP-bound traffic -- on a new entrant into the marketplace.

²¹ AT&T Comments at 14; *see also* WorldCom Comments at 26-33.
²² *Reciprocal Compensation Ruling*, 14 FCC Rcd at 3707.

CONCLUSION

Stability and clarity are vital to the deployment of local competitive services and the viability of new and emerging telecommunications companies. For this reason, Prism urges the Commission to heed the logical assessments and characterizations offered by the Court and the bulk of commenters. In short, the FCC should conclude that, while ISP-bound calls may be jurisdictionally interstate, dial-up calls to ISPs fit more rationally into the local calling model and thus should be compensated. Such an approach is not only within the Commission's jurisdiction, but also advances the public interest.

Respectfully submitted,

PRISM COMMUNICATION SERVICES, INC.



By: Renée Roland Crittendon
Deputy Chief Counsel, Telecommunications

August 4, 2000

CERTIFICATE OF SERVICE LIST

I, Evelyn A. Opany, hereby certify that a correct copy of the Reply Comments of Prism Communication Services, Inc. was served via Courier to the following individuals, this 4th August, 2000.

Honorable William E. Kennard
Chairman
Federal Communications Commission
445 12th Street, SW
Room 8-B201
Washington, DC 20554

Honorable Susan Ness
Commissioner
Federal Communications Commission
445 12th Street, SW
Room 8-B115
Washington, DC 20554

Honorable Gloria Tristani
Commissioner
Federal Communications Commission
445 12th Street, SW
Room 8-C302
Washington, DC 20554

Honorable Michael K. Powell
Commissioner
Federal Communications Commission
445 12th Street, SW
Room 8-A204A
Washington, DC 20554

Honorable Harold Furchtgott-Roth
Commissioner
Federal Communications Commission
445 12th Street, SW
Room 8A-302
Washington, DC 20554

ITS, Inc.
1231 20th Street, NW
Washington, DC 20036

Anna Gomez
Legal Advisor to Chairman Kennard
Federal Communications Commission
445 12th Street, SW
Room 8-B210
Washington, DC 20554

Jordan Goldstein
Legal Advisor to Commissioner Ness
Federal Communications Commission
445 12th Street, SW
Room 8-B115
Washington, DC 20554

Kyle D. Dixon
Legal Advisor to Commissioner Powell
Federal Communications Commission
445 12th Street, SW
Room 8-A204A
Washington, DC 20554

Sarah Whitsell
Legal Advisor to Commissioner Tristani
Federal Communications Commission
445 12th Street, SW
Room 8-C302
Washington, DC 20554

Rebecca Beynon
Legal Advisor to Commissioner
Furchtgott-Roth
Federal Communications Commission
445 12th Street, SW
Room 8-A302
Washington, DC 20554

Linda Kinney
Assistant Bureau Chief-
Special Advisor for Advanced Services
Federal Communications Commission
445 12th Street, SW
Room 5-C041
Washington, DC 20554

Dorothy Attwood
Chief
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW
Room 5-C457
Washington, DC 20554

Michelle Carey
Chief
Policy Division
Federal Communications Commission
445 12th Street, SW
Room 5-C122
Washington, DC 20554

Jared Carlson
Legal Counsel to Bureau Chief
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW
Room 5-C434
Washington, DC 20554

Bob Atkinson
Deputy Chief
Common Carrier Bureau
Federal Communications Commission
45 12th Street, SW
Room 356
Washington, DC 20554

Jake E. Jennings
Deputy Chief, Policy Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW
Room 5-C260
Washington, DC 20554

Janice M. Myles
Policy Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW., TW-A352
Room 5-C327
Washington, DC 20554

Staci Pies
Policy Division
Common Communications Commission
Federal Communications Commission
445 12th Street, SW
Room 5-C360
Washington, DC 20554

Anthony Dale
Accounting Safeguards Division
Federal Communications Commission
Common Carrier Bureau
445 12th Street, SW
Room 6-C461
Washington, DC 20554

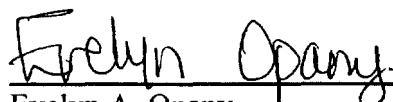
Debbi Byrd
Accounting Safeguards Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW
Room 6-C316
Washington, DC 20554

Carol Matthey
Deputy Chief
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW
Room 356
Washington, DC 20554

Don Stockdale
Associate Chief
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW
Room 5C-354
Washington, DC 20554

Chief, Competitive Pricing Division
445-12th Street, SW
TW-A225
Washington, DC 20554

Date: August 4, 2000



Evelyn A. Opany